IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE J.CHELAMESWAR

WRIT PETITION NO.8011 OF 1997

DATED 8-08-2006

BETWEEN

M.Srinivasa Rao

.. PETITIONER

And

The District Collector,
Khammam and 2 others.

.. RESPONDENTS

THE HONOURABLE SRI JUSTICE J.CHELAMESWAR

WRIT PETITION NO.8011 OF 1997

Oral Order:

The writ petition is filed with the prayer as follows;

> " ..to issue a writ, order or direction particularly a writ of Certiorari calling for records in CMA No.12 of 1995 on the file of R.D.O.Palwancha and to quash the order dated 3.4.1997 by declaring as null and void."

The petitioner entered into an agreement of sale on 9.11.1959 with one Pasanna for the purchase of an extent of Ac.12.39 cents of Agricultural land in S.Nos.817/46, 817/83 and 817/84. It is the case of the petitioner that pursuant to the agreement, he was put in possession

of the property and he has been in possession of the property ever since. On 18.5.1974 the above mentioned Pasanna executed a registered sale deed in favour of the petitioner conveying the above mentioned property. Some time around 1981-82, the petitioner was also given a pattadar passbook.

It appears that some time in the year 1992, when a third party sought to interfere with the possession of the petitioner of the above mentioned property, he lodged a police complaint before P.S. Palvancha. It appears that in connection with the said case a report from the local Mandal Revenue Officer was called for. The local Mandal Revenue Officer submitted a report on 8.12.1992. A copy of the report is filed in the material papers. In the said report, it is stated that:

".. One Paddam Pasanna was granted assignment of land prior to 1958 …"

Subsequently, as interference of the said third party continued, the petitioner filed a civil suit in O.S.No.187 of 1992 on the file of the Junior Civil Judge, Kothagudem seeking permanent injunction restraining the said third party from interfering with his possession of the suit schedule property. The said suit stood decreed on 19.6.1995.

In the year 1993, the local Mandal Revenue Officer attempted to assign the land in question in favour of some persons for house sites. The petitioner herein challenged the said proceedings in Writ Petition No.8109 of 1993 and during the pendency of the writ petition, obtained interim orders of stay of the assignment. The said writ petition came to be disposed of by this Court on 22.1.1997 directing the respondents therein to enquire about the nature of the land and then to take an appropriate decision in accordance with law.

During the pendency of the said writ petition, on 17.10.1995, the third respondent herein issued a notice purporting to be one issued under Section 4 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (hereinafter referred to as "the Act"). The petitioner offered his explanation by letter dated 16.11.1995. In substance, the explanation of the petitioner is that no doubt the land was an assigned land in favour of his vendor Pasanna, but such an assignment was some time in the year 1949-50 at which point of time there was no condition of non-alienation attached to the assigned lands and therefore the land in question is not governed by the above mentioned enactment in view of the definition of the expression "assigned land" under Section 2(1) of the said Act. However, the Mandal Revenue Officer by his order dated 29.11.1995 concluded that the petitioner is liable to be evicted under the provisions of the above mentioned Act. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent herein in CMA No.12 of 1995 and sought for interim orders during the pendency of the said appeal. As no interim order was granted, the petitioner was constrained to file W.P.No.29502 of 1995 which was admitted and interim stay of dispossession of the petitioner was granted on 29.12.1995. The said above mentioned appeal itself came to be dismissed by the 2nd respondent on 3.4.1997. Challenging the said order, the present writ petition is filed.

Learned counsel for the petitioner argued that notwithstanding the declaration contained under Section 3 of the Act that any transfer of an assigned land whether made before or after the commencement of the Act is a void transfer, the condition precedent for the invocation of the said Act is that any land to which the provisions of the said Act are sought to be applied for must be an assigned land defined under

Section 2(1) of the Act. Section 2(1) of the Act reads as under;

> "assigned lands" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly."

It is obvious from the definition that the provisions of the Act could be made applicable only when the land in question is an assigned land i.e. the land assigned by the Government to any landless poor person under the rules for the time being in force and is subject to the condition of non-alienation.

Though the petitioner took a definite stand in response to the proceedings under the above mentioned Act that the land was assigned to his vendor some time in the year 1949-50 and no condition of non-alienation is attached to the assignment and therefore he is not liable to be evicted under the Act, neither the 2nd respondent nor the 3rd respondent ever examined the said question. The very definition of the word 'assigned land' itself indicates that the legislature took note of the fact that assignments are made by the Government either subject to a condition of non-alienation of such assigned land or otherwise. It is only those assigned lands, which are subject to a condition of non-alienation that are amenable to the provisions of the said Act. Therefore, when a specific plea is raised that the land in question was assigned without subjecting it to the condition of non-alienation, it is the primary duty of the respondents to examine the fact and establish that the land was, in fact, was assigned subject to the condition of non-alienation or otherwise.

The facts narrated above clearly establish that the petitioner

has been in long possession of the lands in question having purchased the same by virtue of registered sale deed prior to the commencement of the Act. The sale was preceded by an agreement of sale and there is some material on record, by way of report of the Mandal Revenue Officer dated 8.12.1992, the relevant portion of which is already extracted earlier, which lends support to the stand of the petitioner that the land in question was assigned to his vendor prior to 1958.

The learned Government Pleader submitted that prior to 1958, the condition of non-alienation was not an absolute feature attached to every assignment made by the Government. It was only by virtue of G.O.Ms.No.1406 dated 25.7.1958, issued by the Government, the condition of non-alienation was invariably made essential for every assignment. Even if the respondents believe that the land was assigned in favour of the vendor of the petitioner and therefore liable for action under the above mentioned Act, the respondents are required to establish on the basis of the revenue records that the land in question was assigned to the vendor of the petitioner subject to the condition of non-alienation. No such material is brought on record by the respondents.

In the circumstances, the defence of the petitioner that the land in question was assigned in favour of his vendor without a condition of non-alienation goes unrebutted. Consequently the eviction of the petitioner from the lands in question is illegal and unauthorized by law.

For the aforementioned reasons the writ petition is allowed as prayed for. No costs.

J.CHELAMESWAR,J

Dated 8.8.2006

msv